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VIA ELECTRONIC MAIL [GCOLLORD@ARB.CA.GOV]

Gary Collord
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Comments of Merced Irrigation District on the California Renewable Electricity
Standard Preliminary Draft Regulation

Dear Mr. Collord:

In accordance with the procedures set forth in the March 11, 2010 “Questions and Answers, California Renewable Electricity Standard, Preliminary Draft Regulation” (“Questions and Answers”), Merced Irrigation District (“Merced ID”) submits these comments.

Merced ID is a California irrigation district established under the Irrigation District Law (Water Code section 20500 *et seq.*) and a publicly owned utility (“POU”) as defined in Public Utilities Code section 224.3. Merced ID has generated wholesale electrical power at its hydroelectric facilities, consisting of two plants at the New Exchequer and McSwain Dams on the Merced River and three mini-hydroelectric plants in irrigation canals, for over 80 years. That power is presently sold to Pacific Gas and Electric Company (“PG&E”), who in turn sells it to customers at an average generation rate that is substantially higher than what PG&E pays Merced ID for that power. Since 1996, pursuant to longstanding statutory authorization, Merced ID has distributed to retail customers power it purchases pursuant to secure long-term and flexible short-term agreements, currently serving approximately 7500 electric meters totaling approximately 88 megawatts (“MW”) of peak retail load. Merced ID currently meets a portion of its retail sales with eligible renewable resources, and continues to pursue renewable energy opportunities.

Merced ID is a member of the California Municipal Utilities Association (“CMUA”). Merced ID has reviewed the Comments of CMUA on the California Air Resources Board’s (“CARB”) California Renewable Electricity Standard (“RES”) Preliminary Draft Regulation (“PDR”) and concurs with those comments. Through these comments, Merced ID explains the status of its hydropower resources and provides input with respect to the potential to use those resources for compliance with renewable portfolio standard (“RPS”) goals.

Merced ID appreciates CARB’s recognition that POUs can and do count uncertified renewable resources, such as large or otherwise ineligible hydropower, toward RPS goals, as well as

CARB's proposal to allow POUs to continue to do so under certain conditions. (PDR section 97004(c) and comment following PDR section 97004(c).) Merced ID's New Exchequer facility is an approximately 90 MW hydroelectric facility and McSwain is an approximately 9 MW hydroelectric facility.¹ The contract pursuant to which Merced ID sells the power from these facilities to PG&E was entered into in the 1960's, well before RPS issues were considered and, therefore, is silent in that regard. The contract terminates in 2014, at which time Merced ID may choose to deliver some or all of the output from New Exchequer and McSwain to Merced ID's customers and/or to sell some or all of the output to third parties.

While the power from New Exchequer and McSwain is being sold to PG&E pursuant to decades-old contracts, Merced ID has not been counting that power toward its RPS targets. Merced ID seeks the ability to do so in 2014, when the contracts terminate. The rationale for the proposal in the PDR to allow POUs to continue to count large hydropower toward RPS targets appears to be to "integrate, with limitations, current RPS program provisions that allow POU investments in generation not certified as an RPS-eligible renewable energy resource to be used for compliance with the RES regulation." (Questions and Answers, p. 4.) Merced ID believes this rationale also supports allowing POUs who owned uncertified renewable resources prior to September 15, 2009 (see PDR section 97002(a)(15)), but who do not presently have access to those resources (because of long standing power sales agreements, for example), to count them toward POU RPS targets, subject to reasonable limitations, once they do have access to those resources. Accordingly, Merced ID requests that CARB modify the definition of RES Qualifying POU Resource to include uncertified renewable energy facilities owned by POUs prior to September 15, 2009, where the POUs will have access to the generation on or before December 31, 2015. Merced ID proposes the following revisions to section 97002(a)(15) for consideration:

"RES Qualifying POU Resource" means a renewable energy facility that is not certified by the CEC as eligible for the RPS program where either:

- (A) ~~but whose~~ its generation was approved by the POU's Governing Board as counting toward its RPS targets, and:
 - (i) The POU owned the facility prior to September 15, 2009 or
 - (ii) A contract for electricity from the facility was executed prior to September 15, 2009; and:
 - (a) The POU procured electricity and RECS, or RECs without electricity, from the facility prior to September 15, 2009; and

¹ The McSwain facility is a small hydroelectric facility that appears to meet the definition of "eligible renewable energy resource" under Public Resources Code section 25741 and Public Utilities Code section 399.11.

- (b) The electricity was procured during the initial term of the contract and not during any extended or modified term;

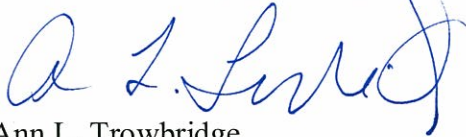
OR

- (B) The POU owned the facility prior to September 15, 2009 and will receive the electricity generated by the facility on or before December 31, 2015, upon termination or expiration of a pre-September 15, 2009 contract to sell the electricity generated by the facility to a third party.

Merced ID appreciates the opportunity to submit these comments and respectfully requests that CARB incorporate them into the PDR.

Very truly yours,

DAY CARTER & MURPHY LLP



Ann L. Trowbridge
Counsel for Merced Irrigation District

cc: Hicham ElTal, Merced Irrigation District (via e-mail)
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